# Gender Parity in Parliaments – an Introduction

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In an ideal world, there would be no laws mandating equal representation of men and women. Candidates for political offices would be selected according to their ability and political programs, representative bodies would roughly represent the composition of society, and the gender of the candidates would hardly be worth mentioning. “I have a dream….”

In the political reality in Germany and elsewhere things are different. Women’s rights and emancipation are not a given. In December 2019, the New York Times reported on the global backlash against women’s rights with reports by UN-institutions confirming this analysis. In Germany as elsewhere, coronavirus has highlighted existing gender inequalities. Such inequalities also persist in the realm of politics. In recent years, the number of female members of the federal parliament as well as state parliaments has reduced or stagnated.

It is this context that the constitutional court of the German state of the south-eastern German state of Thuringia has now taken its first decision on a parity law in that state which required political parties to alternate on their party lists for state elections between male and female candidates and declared that law unconstitutional. (In Thuringia, the number of female representatives had been at an all time high of 41% after the 2014 elections, but has gone back down in the 2019 elections to 31%.) In the state of Brandenburg a similar law is on the agenda of the state constitutional court there, and debates about parity laws are ongoing in a range of other German states and within political parties themselves. All this makes it worth taking a closer look at what is happening.

The issue divides – that much seems clear. It divides the sexes, albeit not exclusively and not always. The decision of the court of Thuringia against the law was taken with the votes of six men on the court against three dissenters, including the only two women on the bench. In other words: A court dominated by men renders a judgment that entrenches male dominance in the state parliament.

One can certainly argue about parity laws. But such arguments should be fully informed. In the German debate so far, this has not always been the case. This symposium understands itself as a modest contribution to changing that situation – and to bring in fresh voices, in particular from abroad and from the social sciences, which have not always played the role in German debates that they should.

This must change. For while it is German law that will ultimately decide if parity laws are constitutional or not, the debate is in its core about competing conceptions of democracy and equality. Democracy and equality, however, are global and European concepts. They should therefore be interpreted in the light of international

and regional emerging standards which, centrally, feed from the state practice of neighboring countries. If quota laws are in Europe and elsewhere increasingly seen as part of democracy – see Rubio-Marin & Lépinard, *Transforming gender citizenship: The irresistible rise of gender quotas in Europe* and as a recent contribution on this blog already pointed out – this should at the very least give us pause to think and reflect, as the former Justice of the Federal Constitutional Court Brun-Otto Bryde has also previously emphasized. Germans may disagree with the understanding of democracy prevailing elsewhere, of course. But those who easily conclude, for example, that parity laws are necessarily incompatible with democracy need to confront the fact that many other democracies do not think so.

Looking elsewhere is not enough. A deeper analysis of both law and context is needed, inside of Germany and abroad. As the debate on parity illustrates, constitutional law is not politically neutral. An informed and useful debate about constitutional principles requires also an engagement with the question why there are not more women in German parliaments and why the numbers have been going down. Social science studies demonstrate that the reasons for this underrepresentation of women are structural. And in light of this, we cannot ignore the GG's commitment to substantive understandings of gender equality and, in particular, Art. 3 para. 2 sentence 2 added to the GG in 1994, which tasks the state to further the implementation of equal rights for men and women in practice – making formal equality insufficient, something the decision from the Court in Thuringia largely ignores, contrary to its parliament.

One must keep in mind that the cases are not just about competing interpretations of constitutional rights and principles but also about the relationship between legislatures and constitutional courts. As German legal experts debate how to balance competing understandings of democracy and the imperative to realize equal rights, these institutional questions often get lost. In Brandenburg and Thuringia, however, the institutional question is central to the debate. For what is at stake is precisely what parliaments may do to address gender imbalances and how much courts like the Thuringian Constitutional Court should stop them from doing so. It should not be confused with the different question whether legislatures are constitutionally obliged to pass parity laws, which is not at issue here.

On this and other related themes, we will hear in the following days from a range of voices, in English and German. We are looking forward to that debate.

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